

AMENDED IN SENATE APRIL 8, 2010

AMENDED IN SENATE MARCH 22, 2010

SENATE BILL

No. 1146

Introduced by Senator Florez

February 18, 2010

An act to amend Section 116.230 of the Code of Civil Procedure, and to amend Sections 22165 and 22166 of, and to add and repeal Article 3.5 (commencing with Section 22348) of Chapter 2 of Division 9 of, the Financial Code, relating to finance lenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 1146, as amended, Florez. Finance lenders: finders: small loans.

(1) Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders and brokers by the Commissioner of Corporations and makes a willful violation of its provisions a crime. Existing law prohibits a licensed finance lender or broker from using advertising copy after its use has been disapproved by the commissioner and the licensee is notified in writing of the disapproval. Existing law authorizes the commissioner to require a licensee to maintain a file of all advertising copy for a period of 90 days from the date of its use. Existing law regulates the charges a licensee may impose or receive on loans it makes and authorizes a licensee to contract for and receive specified alternative charges and administrative and delinquency fees.

This bill would authorize the commissioner to direct any licensee to submit advertising copy for review by the commissioner prior to its use. The bill would authorize the commissioner to require a licensee to maintain a file of all advertising copy for a period of 2 years from the date of its use.

The bill would establish the Pilot Program for Affordable Credit-Building Opportunities for the purpose of increasing the availability of credit-building opportunities to underbanked individuals seeking low-dollar-value loans. The bill would require licensees to file an application with, *and pay a fee to*, the commissioner to participate in the program. The bill would authorize a licensee approved by the commissioner to participate in the program to impose specified alternative *interest rates and* charges, including an administrative fee and delinquency fees, on loans of less than \$2,500, subject to certain requirements, and to use the services of finders, defined as persons who bring a licensee and a prospective borrower together for the purpose of negotiating a loan contract. The bill would require a written agreement meeting specified requirements in order for a licensee to use the services of a finder, would establish the services a finder would be authorized to perform, and would require a finder to comply with the laws applicable to the licensee relative to information security. The bill would require a licensee to notify the commissioner within 10 days of entering into a contract with a finder, would require a licensee to pay an annual finder registration fee to the commissioner, and would require a licensee to submit an annual report to the commissioner on the licensee's relationship and business arrangements with a finder, as specified. The bill would authorize the commissioner to examine the operations of a licensee and a finder to ensure that the activities of the licensee and the finder are in compliance with these provisions. The bill would make a licensee that uses a finder responsible for a violation of these provisions by a finder or a finder's employee. The bill would require the commissioner to report to the Legislature, by January 1, 2014, summarizing utilization of the Pilot Program for Affordable Credit-Building Opportunities, as specified.

Because a willful violation of these provisions would be a crime, this bill would impose a state-mandated local program.

(2) Existing law establishes specified filing fees the clerk of a court is authorized to collect in small claims cases.

This bill would establish a \$25-filing fee for any small claim action filed relative to the alternative charges authorized by this bill for loans made pursuant to the pilot program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 116.230 of the Code of Civil Procedure
2 is amended to read:
3 116.230. (a) In a small claims case, the clerk of the court shall
4 charge and collect only those fees authorized under this chapter.
5 (b) If the party filing a claim has filed 12 or fewer small claims
6 in the state within the previous 12 months, the filing fee is the
7 following:
8 (1) Thirty dollars (\$30) if the amount of the demand is one
9 thousand five hundred dollars (\$1,500) or less.
10 (2) Fifty dollars (\$50) if the amount of the demand is more than
11 one thousand five hundred dollars (\$1,500) but less than or equal
12 to five thousand dollars (\$5,000).
13 (3) Seventy-five dollars (\$75) if the amount of the demand is
14 more than five thousand dollars (\$5,000).
15 (c) If the party has filed more than 12 other small claims in the
16 state within the previous 12 months, the filing fee is one hundred
17 dollars (\$100).
18 (d) (1) If, after having filed a claim and paid the required fee
19 under paragraph (1) of subdivision (b), a party files an amended
20 claim or amendment to a claim that raises the amount of the
21 demand so that the filing fee under paragraph (2) of subdivision
22 (b) would be charged, the filing fee for the amended claim or
23 amendment is twenty dollars (\$20).
24 (2) If, after having filed a claim and paid the required fee under
25 paragraph (2) of subdivision (b), a party files an amended claim
26 or amendment to a claim that raises the amount of the demand so
27 that the filing fee under paragraph (3) of subdivision (b) would be
28 charged, the filing fee for the amended claim or amendment is
29 twenty-five dollars (\$25).
30 (3) If, after having filed a claim and paid the required fee under
31 paragraph (1) of subdivision (b), a party files an amended claim
32 or amendment to a claim that raises the amount of the demand so
33 that the filing fee under paragraph (3) of subdivision (b) would be

1 charged, the filing fee for the amended claim or amendment is
2 forty-five dollars (\$45).

3 (4) The additional fees paid under this subdivision are due upon
4 filing. The court shall not reimburse a party if the party's claim is
5 amended to demand a lower amount that falls within the range for
6 a filing fee lower than that originally paid.

7 (e) Each party filing a claim shall file a declaration with the
8 claim stating whether that party has filed more than 12 other small
9 claims in the state within the last 12 months.

10 (f) Notwithstanding subdivisions (b), (c), and (d), for any action
11 filed to enforce a contract entered into pursuant to Section 22351
12 of the Financial Code, the filing fee shall be twenty-five dollars
13 (\$25).

14 (g) The clerk of the court shall deposit fees collected under this
15 section into a bank account established for this purpose by the
16 Administrative Office of the Courts and maintained under rules
17 adopted by or trial court financial policies and procedures
18 authorized by the Judicial Council under subdivision (a) of Section
19 77206 of the Government Code. The deposits shall be made as
20 required under Section 68085.1 of the Government Code and trial
21 court financial policies and procedures authorized by the Judicial
22 Council.

23 (h) (1) The Administrative Office of the Courts shall distribute
24 six dollars (\$6) of each thirty-dollar (\$30) fee, eight dollars (\$8)
25 of each fifty-dollar (\$50) fee, ten dollars (\$10) of each
26 seventy-five-dollar (\$75) fee, and fourteen dollars (\$14) of each
27 one hundred-dollar (\$100) fee collected under subdivision (b) or
28 (c), and four dollars (\$4) of each twenty-five dollar (\$25) fee
29 collected under subdivision (f), to a special account in the county
30 in which the court is located to be used for the small claims
31 advisory services described in Section 116.940, or, if the small
32 claims advisory services are administered by the court, to the court.
33 The Administrative Office of the Courts shall also distribute two
34 dollars (\$2) of each seventy-five-dollar (\$75) fee collected under
35 subdivision (b) to the law library fund in the county in which the
36 court is located.

37 (2) From the fees collected under subdivision (d), the
38 Administrative Office of the Courts shall distribute two dollars
39 (\$2) to the law library fund in the county in which the court is
40 located, and three dollars (\$3) to the small claims advisory services

1 described in Section 116.940, or, if the small claims advisory
2 services are administered by the court, to the court.

3 (3) Records of these moneys shall be available from the
4 Administrative Office of the Courts for inspection by the public
5 on request.

6 (4) Nothing in this section precludes the court or county from
7 contracting with a third party to provide small claims advisory
8 services as described in Section 116.940.

9 (i) The remainder of the fees collected under subdivisions (b),
10 (c), (d), and (f) shall be transmitted monthly to the Controller for
11 deposit in the Trial Court Trust Fund.

12 (j) All money distributed under this section to be used for small
13 claims advisory services shall be used only for providing those
14 services as described in Section 116.940. Nothing in this section
15 shall preclude the county or the court from procuring other funding
16 to comply with the requirements of Section 116.940.

17 SEC. 2. Section 22165 of the Financial Code is amended to
18 read:

19 22165. No advertising copy shall be used after its use has been
20 disapproved by the commissioner and the licensee is notified in
21 writing of the disapproval. The commissioner may by order direct
22 any licensee to submit advertising copy to the commissioner for
23 review prior to use.

24 SEC. 3. Section 22166 of the Financial Code is amended to
25 read:

26 22166. The commissioner may require licensees to maintain
27 a file of all advertising copy for a period of two years from the
28 date of its use. The file shall be available to the commissioner upon
29 request.

30 SEC. 4. Article 3.5 (commencing with Section 22348) is added
31 to Chapter 2 of Division 9 of the Financial Code, to read:

32
33 Article 3.5. Pilot Program for Affordable Credit-Building
34 Opportunities
35

36 22348. (a) The Pilot Program for Affordable Credit-Building
37 Opportunities is hereby established and is intended to increase the
38 availability of affordable credit-building opportunities to
39 underbanked individuals seeking low-dollar-value loans and to
40 help those individuals move into the financial mainstream.

(b) All references in this article to the program shall mean and refer to the Pilot Program for Affordable Credit-Building Opportunities.

22349. Any licensee wishing to participate in the program shall file an application with the commissioner, in a manner prescribed by the commissioner, and shall pay a fee to the commissioner, in an amount calculated by the commissioner to cover its costs to administer this article.

22350. No licensee may offer or make a loan, nor impose any charges or fees pursuant to Section 22351, nor use a finder pursuant to Section 22352, without prior approval from the commissioner to participate in the program.

~~22351. (a) As an alternative to the charges authorized by Section 22303 or 22304, a licensee approved by the commissioner to participate in the program may contract for and receive charges at a rate not exceeding 3 percent per month on any portion of the unpaid principal balance of a loan.~~

~~(b)~~

22351. (a) Any loan made pursuant to this section shall comply with the following requirements:

(1) Interest on the loan accrues on a simple-interest basis, through the application of a daily periodic rate to the actual unpaid principal balance each day.

(2) The licensee discloses the following to the consumer in writing at the time of application:

(A) The annual percentage rate, the periodic payment amount, and the total finance charge, calculated as required by Federal Reserve Board Regulation Z, as to a loan of an amount and term substantially similar to the loan applied for by the consumer.

(B) That the consumer shall have the right to rescind the loan by notifying the licensee of the consumer's intent to rescind the loan and returning the principal advanced by the end of the business day following the date of the consummation of the loan.

(3) The loan has a term of not less than 90 days and a minimum principal amount upon origination of two hundred fifty dollars ~~(\$250).~~ *(\$250) and a term of not less than the following:*

(A) Ninety days for loans whose principal balance upon origination is less than five hundred dollars (\$500).

1 (B) One hundred twenty days for loans whose principal balance
2 upon origination is at least five hundred dollars (\$500), but is less
3 than one thousand five hundred dollars (\$1,500).

4 (C) One hundred eighty days for loans whose principal balance
5 upon origination is at least one thousand five hundred dollars
6 (\$1,500).

7 (b) As an alternative to the charges authorized by Section 22303
8 or 22304, a licensee approved by the commissioner to participate
9 in the program may contract for and receive charges for a loan
10 made pursuant to this section at a rate not exceeding the sum of
11 the following:

12 (1) Two and one-half percent per month on that part of the
13 unpaid principal balance of the loan up to and including, but not
14 in excess of, one thousand dollars (\$1,000).

15 (2) Two and one-sixth percent per month on that portion of the
16 unpaid principal balance of the loan in excess of one thousand
17 dollars (\$1,000).

18 (c) Notwithstanding subdivision (b), a licensee approved by the
19 commissioner to participate in the program shall reduce the rate
20 on each subsequent loan to the same borrower by a minimum of
21 one-twelfth of 1 percent per month, if all of the following conditions
22 are met:

23 (1) The subsequent loan is originated no more than 180 days
24 after the prior loan is fully repaid.

25 (2) The borrower was never more than 15 days delinquent on
26 the prior loan.

27 (3) The prior loan was outstanding for at least one-half of its
28 original term prior to its repayment.

29 (e)

30 (d) As to any loan made under this section, a licensee approved
31 by the commissioner to participate in the program may contract
32 for and receive an administrative fee, which shall be fully earned
33 immediately upon making the loan, in an amount not in excess of
34 either 5 percent of the principal amount, exclusive of the
35 administrative fee, or ~~seventy-five dollars (\$75)~~ sixty-five dollars
36 (\$65), whichever is less. A licensee shall not charge the same
37 borrower more than one origination fee in any six-month period.
38 An administrative fee shall not be contracted for or received in
39 connection with the refinancing of a loan unless at least one year
40 has elapsed since the receipt of a previous administrative fee paid

1 by the borrower. Only one administrative fee shall be contracted
2 for or received until the loan has been repaid in full. ~~For purposes~~
3 ~~of this section, “bona fide principal amount” shall be determined~~
4 ~~in accordance with Section 22251.~~ Section 22305 shall not apply
5 to any loan made under this section.

6 ~~(d)~~

7 (e) Notwithstanding subdivision (a) of Section 22320.5, a
8 licensee approved by the commissioner to participate in the
9 program may contract for and receive a delinquency fee not in
10 excess of ~~one of the following amounts:~~

11 ~~(1) For a period in default of not less than seven days, an amount~~
12 ~~not in excess of twenty dollars (\$20).~~

13 ~~(2) For a period in default of not less than 14 days, an amount~~
14 ~~not in excess of twenty-five dollars (\$25);~~ *twenty dollars (\$20),*
15 *for a period in default of not less than seven days.*

16 ~~(e)~~

17 (f) The following shall apply to a loan made by a licensee
18 pursuant to this section:

19 (1) Prior to disbursement of loan proceeds, the licensee shall
20 either (A) offer a credit education program or seminar to the
21 borrower; that has been previously reviewed and approved by the
22 commissioner for use in complying with this section; or (B) invite
23 the borrower to a credit education program or seminar offered by
24 an independent third party; that has been previously reviewed and
25 approved by the commissioner for use in complying with this
26 section. The borrower shall not be required to participate in either
27 of these education programs or seminars.

28 (2) The licensee shall report each borrower's payment
29 performance to at least one of the three major credit bureaus in the
30 United States.

31 (3) The licensee shall underwrite each loan, and shall not make
32 a loan; if it determines, through its underwriting, that the
33 borrower's total monthly debt service payments, at the time of
34 origination, including the loan for which the borrower is being
35 considered, and across all outstanding forms of credit known to
36 the licensee, ~~do not~~ exceed 50 percent of the borrower's gross
37 monthly income.

38 ~~(f)~~

39 (g) This section shall not apply to any loan of a bona fide
40 principal amount of two thousand five hundred dollars (\$2,500)

1 or more as determined in accordance with Section 22251. *For*
2 *purposes of this subdivision, “bona fide principal amount” shall*
3 *be determined in accordance with Section 22251.*

4 22352. (a) A licensee who is approved by the commissioner
5 to participate in the program may use the services of one or more
6 finders as provided in this article.

7 (b) For purposes of this article, a “finder” means a person who
8 brings a licensee and a prospective borrower together for the
9 purpose of negotiating a loan contract.

10 22353. (a) A finder may perform one or more of the following
11 services for a licensee:

12 (1) Distributing, circulating, using, or publishing preprinted
13 brochures, flyers, fact sheets, or other written materials relating to
14 loans that the licensee can make or negotiate and that have been
15 reviewed and approved in writing by the licensee prior to their
16 being distributed, circulated, or published.

17 (2) Providing written factual information about loan terms,
18 conditions, or qualification requirements to a prospective borrower
19 that has been either prepared by the licensee, or reviewed and
20 approved in writing by the licensee. A finder may discuss that
21 information with a prospective borrower in general terms, but may
22 not provide counseling or advice to a prospective borrower.

23 (3) Notifying a prospective borrower of the information needed
24 in order to complete a loan application without providing
25 counseling or advice to a prospective borrower.

26 (4) Entering information provided by the prospective borrower
27 on a preprinted or electronic application form or onto a
28 preformatted computer database without providing counseling or
29 advice to a prospective borrower.

30 (5) Assembling credit applications and other materials obtained
31 in the course of a credit application transaction for submission to
32 the finance lender.

33 (6) Contacting the licensee to determine the status of a loan
34 application.

35 (7) Communicating a response that is returned by the licensee’s
36 automated underwriting system to a borrower or a prospective
37 borrower.

38 (8) Obtaining a borrower’s signature on documents prepared
39 by the licensee and delivering final copies of the documents to the
40 borrower.

1 (b) A finder shall not engage in any of the following activities:

2 (1) Providing counseling or advice to a borrower or prospective
3 borrower.

4 (2) Providing loan-related marketing material that has not
5 previously been approved by the licensee to a borrower or a
6 prospective borrower.

7 (3) Interpreting or explaining the relevance, significance, or
8 effect of any of the marketing materials or loan documents the
9 finder provides to a borrower or prospective borrower.

10 (c) Any person who performs one or more of the following
11 activities is a broker within the meaning of Section 22004 rather
12 than a finder within the meaning of this section:

13 (1) Negotiating the price, length, or any other loan term between
14 a licensee and a prospective borrower.

15 (2) Advising either a prospective borrower or a licensee as to
16 any loan term.

17 (3) Offering information pertaining to a single prospective
18 borrower to more than one licensee, except that, if a licensee has
19 declined to offer a loan to a prospective borrower and has so
20 notified that prospective borrower in writing, the person may then
21 offer information pertaining to a single prospective borrower to
22 another licensee with which it has a finder's agreement.

23 (d) A finder shall comply with all laws applicable to the licensee
24 that impose requirements upon the licensee for safeguards for
25 information security.

26 22354. A finder may be compensated by the licensee pursuant
27 to the written agreement between the licensee and the finder, as
28 described in Section 22356. No licensee shall, directly or indirectly,
29 pass on to a borrower any fee, or any portion of any fee, that the
30 licensee pays to a finder in connection with that borrower's loan
31 or loan application.

32 22357. A licensee that utilizes the services of a finder shall do
33 all of the following:

34 (a) Notify the commissioner within 10 days of entering into a
35 contract with a finder, on a form acceptable to the commissioner,
36 regarding all of the following:

37 (1) The name and business address of the finder.

38 (2) The name and contact information for an employee of the
39 finder who is knowledgeable about, and has the authority to

1 execute, the contract governing the business relationship between
2 the finder and the licensee.

3 (3) The name and contract information for one or more
4 employees of the finder who is or are responsible for the activities
5 of the finder at each of its branch locations.

6 (4) A list of the activities the finder shall perform on behalf of
7 the licensee.

8 (5) Any other information requested by the commissioner.

9 (b) Pay an annual finder registration fee to the commissioner
10 in an amount to be established by the commissioner by regulation
11 for each finder utilized by the licensee.

12 (c) Submit an annual report to the commissioner including any
13 information pertaining to each finder and the licensee's relationship
14 and business arrangements with each finder as the commissioner
15 may by regulation require.

16 22358. All arrangements between a licensee and a finder shall
17 be set forth in a written agreement between the parties. The
18 agreement shall contain a provision establishing that the finder
19 agrees to comply with all regulations that are established by the
20 commissioner pursuant to this article regarding the activities of
21 finders and that the commissioner shall have access to all of the
22 finder's books and records that pertain to the finder's operations
23 under the agreement with the licensee.

24 22359. The commissioner may examine the operations of each
25 licensee and each finder to ensure that the activities of the licensee
26 and the finder are in compliance with this article. The costs of the
27 commissioner's examination of each finder shall be attributed to
28 the commissioner's examination of the licensee. Any violation of
29 this article by a finder or a finder's employee shall be attributed
30 to the finance lender with whom it has entered into an agreement
31 for purposes of determining the licensee's compliance with this
32 division.

33 22360. On or before January 1, 2014, the commissioner shall
34 submit a report to the Legislature, in compliance with Section 9795
35 of the Government Code, summarizing utilization of the Pilot
36 Program for Affordable Credit-Building Opportunities; and
37 including recommendations regarding whether the program should
38 be continued after January 1, 2015. The report shall include, but
39 not be limited to, the following:

1 (a) The number of finance lender licensees who applied to
2 participate in the program.

3 (b) The number of finance lender licensees accepted to
4 participate in the program.

5 (c) The number of loans made pursuant to the program, and the
6 distribution of interest rates and principal amounts upon origination
7 among those loans.

8 (d) Recommendations for improving the program.

9 (e) Recommendations regarding whether the program should
10 be continued after January 1, 2015.

11 22361. This article shall remain in effect only until January 1,
12 2015, and as of that date is repealed, unless a later enacted statute,
13 that is enacted before January 1, 2015, deletes or extends that date.

14 SEC. 5. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.